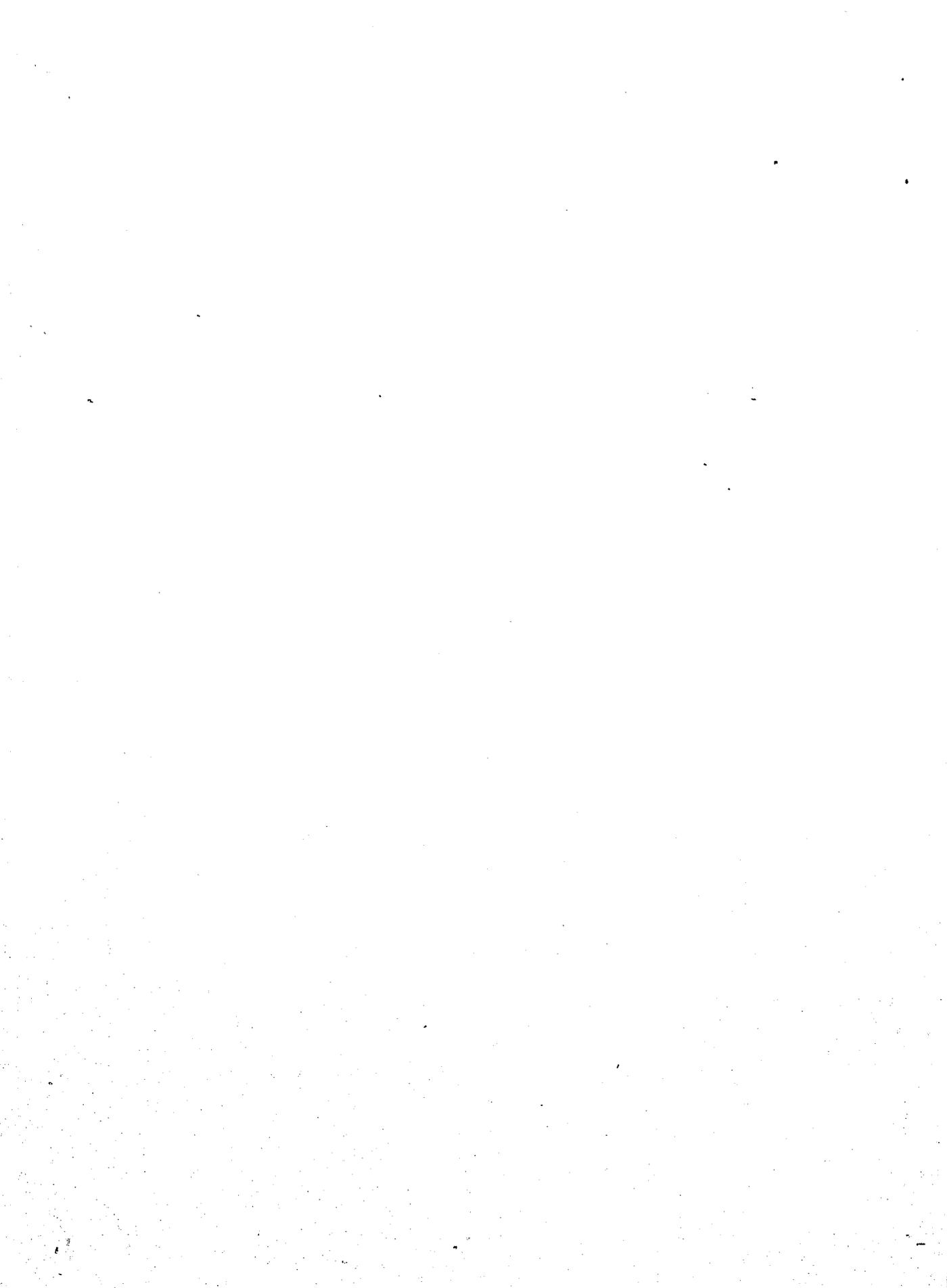


**REPORT
OF THE SPECIAL COMMITTEE
ON ENHANCING
THE EFFECTIVENESS OF THE PRINCIPLE
OF NON-USE OF FORCE
IN INTERNATIONAL RELATIONS**

GENERAL ASSEMBLY
OFFICIAL RECORDS: THIRTY - THIRD SESSION
SUPPLEMENT No. 41 (A/33/41)



UNITED NATIONS



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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. INTRODUCTION

1. At its 106th plenary meeting, on 19 December 1977, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 32/150 entitled "Conclusion of a world treaty on the non-use of force in international relations", which reads as follows:

"The General Assembly,

"Considering that, in conformity with the Charter of the United Nations, States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

"Reaffirming the need for universal and effective application of this principle in international relations and for assistance by the United Nations in this endeavour,

"Recalling its resolution 31/9 of 8 November 1976, in which it invited Member States to examine further the draft World Treaty on the Non-Use of Force in International Relations 2/ submitted by the Union of Soviet Socialist Republics as well as other proposals and statements made during the consideration of this item,

"Noting the report of the Secretary-General which contains views and suggestions of Member States on the conclusion of a world treaty on the non-use of force in international relations, 3/

"1. Decides to establish a Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, composed of thirty-five Member States to be appointed by the President of the General Assembly on the basis of equitable geographical distribution and representing the principal legal systems of the world;

"2. Instructs the Special Committee to consider proposals and suggestions submitted by any State, bearing in mind the views expressed during the debates on this item at the thirty-first and thirty-second sessions of the General Assembly, with the goal of drafting a world treaty on the non-use of force in international relations as well as the peaceful settlement of disputes or such other recommendations as the Committee deems appropriate;

1/ Official Records of the General Assembly, Thirty-second Session, Annexes, agenda item 37, document A/32/466.

2/ Ibid., Thirty-first Session, Annexes, agenda item 124, document A/31/243, annex.

3/ A/32/181 and Add.1.

"3. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services, including the preparation of summary records of the meetings of the Committee;

"4. Decides to include in the provisional agenda of its thirty-third session an item entitled 'Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations'."

2. Under the terms of paragraph 1 of the above resolution, the President of the General Assembly, after appropriate consultations, appointed the following 35 Member States as members of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations (A/32/500):

Argentina	Italy
Belgium	Japan
Benin	Mexico
Brazil	Mongolia
Bulgaria	Morocco
Chile	Nepal
Cuba	Poland
Cyprus	Romania
Ecuador	Senegal
Egypt	Somalia
Finland	Spain
France	Togo
Germany, Federal Republic of	Turkey
Greece	Uganda
Guinea	Union of Soviet Socialist Republics
Hungary	United Kingdom of Great Britain and Northern Ireland
India	United States of America
Iraq	

3. The Special Committee met at United Nations Headquarters from 21 August to 15 September 1978. All the Member States appointed as members of the Special Committee took part in its work.

4. The session was opened on behalf of the Secretary-General by Mr. Mikhail D. Sytenko, Under-Secretary-General for Political and Security Council Affairs, who represented the Secretary-General at an early part of the session. Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, represented the Secretary-General at the later part of the session. Mr. Valentin A. Romanov, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee.

5. At its 1st meeting, on 21 August, the Special Committee elected the following officers:

Chairman: Mr. Francisco Cuevas Cancino (Mexico)

Vice-Chairmen: Mr. Andreas J. Jacovides (Cyprus)
Mr. Akanyi-Awunyo Kodjovi (Togo)
Mr. Dimiter Kostov (Bulgaria)

Rapporteur: Mr. Eric Duchêne (Belgium)

6. At the same meeting, the Special Committee adopted the following agenda:
 1. Opening of the session.
 2. Election of officers.
 3. Adoption of the agenda.
 4. Organization of work.
 5. Consideration, pursuant to paragraph 2 of General Assembly resolution 32/150, of proposals and suggestions submitted by States.
 6. Adoption of the report.
7. At its 2nd meeting, on 22 August, the Special Committee decided to start its work with a general debate.
8. At the 3rd meeting, on 23 August, the representative of the Union of Soviet Socialist Republics introduced a "Draft World Treaty on the Non-Use of Force in International Relations", proposed by his delegation (A/AC.193/L.3), which is annexed to the present report. At the 14th meeting, on 15 September, the Special Committee had before it a draft resolution submitted by Bulgaria (A/AC.193/L.5). At the same meeting, the representative of Bulgaria stated that he would not insist on this draft resolution.
9. At the 4th meeting, on 24 August, the Special Committee, in connexion with the communication of the Latin American Group regarding observers from Nicaragua, Panama and Peru (A/32/500, annex III) and the separate requests for such a status by Czechoslovakia and the German Democratic Republic, the Special Committee agreed that representatives of Member States indicating a desire to contribute to the work of the Committee might, with the consent of the Committee, address the Committee and expand on the written replies of their Governments. In accordance with this decision, the representative of the German Democratic Republic was allowed to make a statement.
10. At its 13th meeting, on 8 September, the Special Committee decided to establish an open-ended Working Group whose mandate would be the same as that entrusted to the Committee itself. The Working Group held three meetings, between 11 and 13 September. There was a preliminary exchange of views with reference to the mandate to be fulfilled by the Working Group. The representative of the Union of Soviet Socialist Republics introduced in detail article I of the Soviet draft. A number of representatives expressed the view that before considering drafts the Group should examine the problems underlying the Working Group's mandate. A number of other representatives made statements containing some suggestions with respect to article I of the Soviet draft.
11. Since the Committee has not completed its work, it recognized the desirability of further consideration of the questions before it. Many delegations supported the continuation of the Committee's work and stressed the importance of the issues. On the other side there were delegations which took the position that the renewal of the mandate was a matter falling within the competence of the General Assembly.

II. ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

A. General observations on the task before the Committee

12. A number of delegations commented in general terms on the task entrusted to the Committee by General Assembly resolution 32/150.

13. Many representatives placed special emphasis on the enhancement of the principle of non-use of force. That principle, it was stated, was the corner-stone of the structure of international relations and of the international legal order. The task of the Committee was as a result viewed as far-reaching and of profound political importance. If, it was observed, the effectiveness of the principle of non-use of force in international relations was enhanced, that in turn would strengthen international peace and security, consolidate international détente and provide an international guarantee for the safety of peoples. The principle of non-use of force, it was added, was closely linked to other legal principles such as the territorial integrity of States, political independence, territorial inviolability, non-interference in internal affairs, the sovereign equality of States, equal rights, self-determination of peoples and the peaceful settlement of disputes. Any strengthening of the principle of non-use of force would thus result in a strengthening of all the other principles and, inasmuch as all those principles were inherent in the principle of non-use of force, it would be wrong to identify the latter with any particular one of the principles listed above at the expense of the others. It was stressed that one of the most important steps in this respect was the conclusion of a world treaty on the non-use of force.

14. Other representatives stressed the complexity of the Committee's subject-matter which, it was noted, lay at the core of the work of the United Nations. Safeguarding and maintaining international peace and security was, it was observed, the overriding task of the United Nations and, while the prohibition of the use of force was essential for the maintenance of peace, it was inextricably linked with the concept of the peaceful settlement of disputes and the need for effective machinery to enforce that principle. The principle of non-use of force was thus an integral part of a whole from which it could not be disassociated and it was dangerous to isolate it to give it special treatment. The Committee's mandate, it was added, was to consider ways of promoting not only the non-use of force in international relations but also the peaceful settlement of disputes, two principles which were closely interrelated and mutually complementary in the maintenance of international peace and security and should therefore be dealt with simultaneously and in a balanced way.

15. A number of delegations commented on the various ways in which the Committee could approach its task. It was emphasized that in paragraph 2 of General Assembly resolution 32/150 the Committee was instructed "to consider proposals and suggestions submitted by any State ... with the goal of drafting a world treaty on the non-use of force in international relations", while the question of the peaceful settlement of disputes was placed on the level of "other recommendations as the Committee deemed appropriate". Paragraph 2 of that resolution unquestionably referred to the drafting of a world treaty as the Committee's

primary task. That interpretation of the Committee's mandate - the only true interpretation - was strengthened by the reference in that paragraph to the views expressed during the debates on the item at the thirty-first and thirty-second sessions of the General Assembly, at which the overwhelming majority of States had unequivocally expressed their support for just such a treaty. That interpretation of the Committee's mandate was borne out by the preamble of the resolution, which also referred to the principle of the non-use of force and to the draft world treaty on the non-use of force submitted by the Soviet Union in document A/31/243. An identical interpretation of the Committee's task flowed from General Assembly resolution 31/9. Thus, there was no contradiction between the Committee's mandate and the title of General Assembly resolution 32/150, which read "Conclusion of a world treaty on the non-use of force in international relations". A number of other delegations disagreed with this view stressing that paragraph 2 of resolution 32/150 read as follows:

"2. Instructs the Special Committee to consider proposals and suggestions submitted by any State, bearing in mind the views expressed during the debates on this item at the thirty-first and thirty-second sessions of the General Assembly, with the goal of drafting a world treaty on the non-use of force in international relations as well as the peaceful settlement of disputes or such other recommendations as the Committee deems appropriate;"

It was further pointed out that not only was the peaceful settlement of disputes an integral part of all aspects of the mandate but the word "or" in paragraph 2 clearly established that the Committee was completely free to consider a treaty, a resolution, a series of resolutions, a recommendation that no action be taken or any other course it deemed appropriate. It was also pointed out that the change from the initial title of the item, which focused exclusively on a treaty, to "Report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations" underlined the clear intention of the Assembly to broaden the Committee's mandate to include any recommendation the Committee deemed appropriate. The most logical approach, it was stated, would be to concentrate on finding alternatives to the use of force, i.e., to concentrate on the positive injunction to settle international disputes by peaceful means. The view was also expressed that the Committee's task was to explore all the means of making the general prohibition of the use of force more effective. In this connexion, a number of delegations considered the concept of collective security as another corollary of the principle of the non-use of force. The main ideas which emerged during the discussion as to the various courses open to the Committee are summarized in sections B to D below.

16. A number of representatives stressed the need for a constructive spirit and for striving towards generally acceptable solutions. The tremendous legal and political impact of the question being dealt with, it was said, called for a patient quest for solutions based on a general consensus. The Special Committee must strive for unanimous agreement on a document which represented a real step forward and not a mere statement of aspirations. It should be guided above all by the idea that the final result must win the general approbation of the various groups if it was to bear fruit and become a binding set of guidelines for Governments and an effective step on the long road to genuine universal détente. Only on the basis of a consensus and not by a numerical majority, it was stressed, would it be possible to arrive at meaningful and workable solutions.

17. Some delegations maintained that the ground that the Committee was covering in connexion with the question of the non-use of force was substantially the same as that being covered by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Not only was it incredibly inefficient to have two committees working on the same subject-matter, it was said, but there was also the very considerable risk of their producing recommendations which would not be in complete harmony. It was noted that many delegations were hard put to staff, much less prepare for, the number of meetings held each year. It was consequently suggested that some thought should be given to that problem of duplication. One possibility, it was observed, would be to suggest to the Sixth Committee that it should remove peaceful settlement and international peace and security from the agenda of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, or at least that it should ask that those questions be treated in the same manner in which that Committee had tacitly agreed to treat Economic and Social Council issues, namely, that consideration of those issues which were being considered elsewhere should be deferred. Alternatively, the Sixth Committee might be informed that the overlap between the two Special Committees was so extensive that the mandate of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force should be combined with the mandate of the Special Committee on the Charter so that the same issues might be examined in the same place in greater depth and with more coherence.

18. One delegation pointed out that the problem of duplication did not arise as those delegations who wished to discuss the question of the peaceful settlement of disputes could be referred to the Soviet draft treaty in which that matter was covered.

B. Drafting a world treaty on the non-use of force
in international relations

1. General views

19. Many delegations welcomed the proposal of the Soviet Union to elaborate a world treaty on the non-use of force in international relations as proposed in document A/AC.193/L.3. In this connexion, the view was expressed that the political climate was favourable to such an undertaking: the idea of concluding a treaty on the non-use of force, it was stated, had already met with approval and support not only among the broadest circles of world public opinion, but also among the overwhelming majority of States Members of the United Nations and the timeliness and importance of the Soviet proposal were attested by the views expressed by Governments and by the relevant resolutions of the General Assembly. Furthermore, it was maintained, the current détente in international relations created propitious conditions for the conclusion of the proposed treaty.

20. It was stressed that although the principle of the non-use of force had been recognized by virtually all States as one of the main foundations of international relations, had received legal confirmation in Article 2, paragraph 4, of the Charter and had been authoritatively confirmed and developed in a number of international instruments, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations as well as in a number of bilateral treaties, the world had witnessed since the entry into force of the

Charter over a hundred wars and armed conflicts in which millions of people had perished. While certain circles still preached the admissibility of "local", "restricted" or "controlled" armed conflicts, the constant development of nuclear weapons and the current network of military alliances carried with them the threat that such conflicts could escalate into a world-wide thermonuclear war. In this connexion, it was noted that when the Charter had been signed nuclear weapons had been virtually non-existent; since then nuclear weapons with unprecedented destructive powers had emerged; at no time, therefore, had the risk of man's annihilation been so great and at no time had the struggle for peace been so necessary. Furthermore, it was stated, there were still active forces in the world which were striving to undermine the process of détente, whip up the arms race, create new types of lethal weapons and strengthen the aggressive military blocs and which were trying to revive an atmosphere of fear in inter-States relations and exacerbate hotbeds of tension. Reference was made in this connexion to the Conference of Ministers for Foreign Affairs of Non-Aligned Countries held at Belgrade in July which had expressed particular concern at the reversals in the process of détente. All these factors, it was maintained, pointed to the timeliness of the Soviet initiative.

21. In the view of its supporters, the proposed treaty would exert a positive influence on international relations: it would help to strengthen international peace and security and lessen the danger of armed conflicts; it would have a considerable preventive effect, constituting a legal instrument for discouraging and disarming the aggressor; it would contribute to the process of détente and international co-operation, improve the climate of international relations, increase confidence among States and enhance the role of the United Nations; it would help to curb the steadily intensifying arms race and promote progress in disarmament, which would, in turn, favourably affect the economic development of all States, particularly developing countries; it would facilitate the solution of conflict situations, both present and future, in accordance with the Charter of the United Nations and would constitute an important instrument for shaping international relations on a global scale; it would help to eliminate colonial oppression and neo-colonialist practices and to realize the right of every people to self-determination, economic independence and full sovereignty over its natural resources; finally, it would stimulate economic, social and technical progress.

22. Thus, it was stated, the proposed treaty, far from weakening the relevant provisions of the Charter, would enhance their effectiveness. In this connexion, it was stressed that, while it was true that the principle of non-use of force had been enshrined in the Charter, principles of international law could be enhanced by the conclusion of international treaties and the establishment of binding juridical rules, which was precisely the aim of the proposed treaty. A similar approach had been used to promote the progressive development of other principles laid down in the Charter. Many Charter principles and provisions, it was recalled, had been progressively codified and developed since the inception of the United Nations and it was only natural that they should be further interpreted and concretized as international relations developed. Reference was made in this connexion to General Assembly resolution 1815 (XVII) of 18 December 1962, by which the Assembly had decided to undertake, pursuant to Article 13, paragraph 1 (a), of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification so as to secure their more effective application, an initiative which had been brought to a successful

conclusion with the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)).

23. It was stated that the claim that the proposed treaty could have a negative influence on the legal force of the Charter was unfounded. In this connexion, a distinction was drawn between the legal force of a principle and its effectiveness; the proposed treaty, while merely confirming the legal force already possessed by the principle under consideration, would seek to raise its effectiveness.

24. It was also stated that the argument that the principle of non-use of force being already an active principle of international law could not be strengthened by a treaty because the reason for the non-observance of the norm lay in the absence of political will was unfounded. The strict fulfilment by States of their obligations could not, it was observed, be automatically assumed merely as a result of their being parties to a treaty since the will of States presupposed a complex of social and political factors not governed by international law. However, the will of States could not be weighed against the obligation not to use force. Moreover, the argument in question reflected a nihilistic approach towards international law and a belief in the freedom of States to act in accordance with circumstances.

25. A number of other delegations, while recognizing that the world, although it had been spared a third world war, had witnessed much violence in the last three decades and while agreeing that Member States were bound by the Charter to seek to remedy that situation, expressed serious doubts as to the appropriateness of elaborating a treaty at all or adopting the course followed in the Soviet draft. Some of them, while declaring themselves in agreement with the fundamental objective of the Soviet draft and while commending that initiative which would hopefully give rise to fruitful dialogue and produce the requisite results, stressed that the objections and doubts voiced required careful consideration.

26. The principle of non-use of force, it was observed, was already stated with admirable clarity in the United Nations Charter, in particular in its Article 2, paragraph 4, and the clarity and scope of that provision were confirmed by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Thus, the basic problem was not that there was no rule prohibiting the use of force or that some States were unaware of the existence of such a rule for all States were aware that a clear and solemn rule did exist. If some of them were prepared to break that rule or to maintain that it did apply, no amount of repetition of the injunction against the threat or use of force would deter them from breaking the rule. In this connexion, it was recalled that, as demonstrated in the case of the briefly worded Paris Pact of 1928, precedent did not speak favourably of the efficacy of the technique proposed by the Soviet Union, namely, restatement and affirmation in a brief treaty text of the principle of non-use of force. The proven sterility of the Pact, it was added, and the failure of the League of Nations had shown that proclamations or treaties on the use of force and the outlawing of war were not in themselves effective: the lesson learned from the Second World War was that the best hope lay in a comprehensive collective security system.

27. Furthermore, it was observed, the principle of non-use of force was linked

with the principle of the peaceful settlement of disputes and the right of self-defence and was a component of the peace-keeping system established by the Charter in Articles 11 and 12 and in Chapter VII. Risking to divest the Security Council of its freedom of action and to restrict its discretionary powers under Article 39 would be most dangerous and that was why texts of such political importance on the definition of aggression had been given the status of a recommendation. Although there were undeniably instances of conventions that expanded on provisions of the Charter, particularly in the field of human rights, no immediate parallel could be drawn between the subject-matter of human rights and that of non-use of force. In the latter case, it did not seem possible to develop the principles laid down in the Charter without upsetting the basic balance established in this context by the Charter. In this connexion, the view was expressed that, if the Soviet Union had submitted the draft of a resolution or a solemn declaration of the General Assembly, it would have been easier to accept a text along lines similar to the proposed draft; however, the fact that the format chosen was that of a treaty called for a much more cautious attitude.

28. As to the formulation of the proposed treaty, it was pointed out that, if the provisions of the envisaged instrument were identical to those of the Charter, the repetition of an existing obligation would give the false impression that time had eroded that obligation; it would also call into question the effect of the Charter. If, on the other hand, the obligation set forth in Article 2, paragraph 4, were to be not only reaffirmed but also reformulated as in the proposed draft, there would be a risk of differing interpretations of the two formulae, which would open the way to new problems; the provisions of Article 103 of the Charter would be helpful in the event of a clear conflict between the wording of a treaty and that of the Charter but the question became more subtle when the conflict was not obvious. In this connexion, it was stated that the qualification of the principle of non-use of force might detract from the original more general principle and might give those countries which sought to avoid the Charter prohibition of the use of force a means of arguing that that prohibition had been overtaken by a later instrument or that the later instrument took account of some consideration which was not contemplated in the Charter and which therefore could only have a qualifying effect. Mention was made in this connexion of the problem of asserted or implied exceptions or reservations to the principle of non-use of force, including, *inter alia*, the assertion that armed struggle and assistance to those engaged in armed struggle was consistent with the Charter - a proposition which, it was stated, was by no means generally accepted as a proposition of law - and also including the all too frequent attempts of States guilty of encouraging the use of force by proxy or covertly to disclaim responsibility for the ensuing violence or even to justify uses of force, as well as the use of force across frontiers to ensure doctrinal orthodoxy.

29. Another difficulty which was mentioned related to the eventuality where, in the absence of consensus on the listing of types of actions to be included or excluded from the prohibition of the use of force, a number of States would abstain from becoming parties to the new instrument: in such a case, the fact that a treaty that claimed to define the obligation not to resort would not be accepted by the whole of the international community would cast doubt on the value of Article 2, paragraph 4, and weaken the principle which the treaty aimed at strengthening. Another problem which would arise would be that of the relationship between Member States of the United Nations who were not parties to the proposed treaty and those who were.

30. A number of delegations stressed that the Soviet initiative was intended to strengthen the legal and political system established by the United Nations Charter and therefore deserved to be encouraged and supported. In this connexion, it was recalled that the question of the conclusion of a world treaty on the non-use of force in international relations had been raised for the first time by the Non-Aligned Movement at its summit conference held at Lusaka in 1970.

31. The view was expressed that if a treaty on the non-use of force could be drafted which would not detract from the equivalent provisions of the Charter nor prejudice their fundamental validity but would enhance their application and remove the ambiguities and loop-holes that had given rise to abuses in the past, such an instrument would make a valuable contribution to the legal regulation of the use of force in international relations. In this connexion, disagreement was expressed with the view that the principle of non-use of force could not be discussed without due regard to the fact that it formed part and parcel of a whole structure and philosophy of a world order based on the existence of the United Nations. Caution had to be exercised but it should not be allowed to disguise any lack of inclination to make the principle viable and effective. Any treaty which could be arrived at might, without derogating from the corresponding provisions of the Charter, refine them by taking into account the significant developments which had taken place in international life in the past 33 years and the wealth of jurisprudence which had accumulated within and outside the United Nations during that period.

32. One of the elements to which attention was drawn was the need for an adequate definition of the notion of force and the use of force covering, in addition to military force, subversive and economic coercion. Reference was made in this connexion to the recent declaration approved by the Conference of Ministers for Foreign Affairs of Non-Aligned Countries, held at Belgrade in July 1978, which reiterated the need to eliminate the threat or use of force and pressure in international relations as one of the fundamental objectives of the policy of non-alignment and deplored pressures such as outside support to terrorism, covert attempts to destabilize Governments, the use of mercenaries, defamatory press campaigns and financial bodies to try to control international credit in ways which came close to interference in the internal affairs of States, and violation of the principle of non-intervention. With regard to subversion, the view was expressed that it was no longer possible to condemn in words the use of force in international relations while undertaking subversive actions designed to destabilize whole regions or to set up hegemonic systems; a new international instrument on the non-use of force should contain a clear denunciation of direct or indirect outside intervention against the political independence or territorial integrity of States.

33. The view was further expressed that a treaty on non-use of force in international relations should place emphasis on the territorial aspects of the non-use of force or the threat of force such as prohibition of the occupation of territory and other acts directed against the unity and territorial integrity of States and prohibition of the deployment of the armed forces of a State against the territory of another State.

34. Any treaty, it was added, should contain the express obligation of nuclear-weapon States to refrain from using nuclear weapons or threatening to use them against non-nuclear-weapon States and not to be the first to use such weapons.

It should also incorporate the obligation of all States to adopt effective measures for disarmament and to reduce the danger of a confrontation between them.

35. Another element which was mentioned was the recognition of the legitimacy of the struggle of colonial and other dependent peoples for liberation. In this connexion, the view was expressed that the treaty should provide expressly for the right of peoples to wage a struggle, including armed struggle, for their liberation from colonial domination. Others who supported the rights of peoples questioned whether it was wise to elaborate a treaty which expressly permitted uses of force not covered in the Charter.

36. While considering that the inclusion in a world treaty of elements such as those listed above would represent a major step forward, a number of delegations recognized that caution had to be exercised because of the utmost importance of the relationship between the Charter and a new treaty and as a result, the form of the document should not be decided upon from the outset; much could be accomplished through more precise interpretations that took account of new-concerns and of the desire of Member States for peace and security, a path which had been followed in the case of the Declaration on Friendly Relations and the Final Act of the Conference on Security and Co-operation in Europe.

37. If, it was added, it became clear that there were more pitfalls than had been anticipated, the Soviet initiative would in any case provide a useful institutional framework for the discussion of important problems. Among those problems, mention was made of the definition of the right of self-defence. In this connexion, it was stated that self-defence should not be invoked to justify the astronomical costs of the arms race and to reject such positive proposal as that calling for a small percentage of the money currently spent on armaments to be used to improve the well-being of the masses of the world; safeguards were likewise necessary, it was added, to prevent self-defence from being invoked in case of unfounded claims of foreign aggression. It was further noted that the majority of developing countries believed that the exercise of the right of self-defence was not the only situation in which the use of force was permissible and that there were other rights which, given the imperfect world established by the Charter of the United Nations, must, in the last resort, be protected by force. The view was on the other hand expressed that armed reprisals to obtain satisfaction for injury and armed intervention as an instrument of national policy otherwise than for self-defence were illegal under the Charter and that, the prevalent view, with regard to the exceptions based on Article 51, had been that it should be interpreted in the strict sense and that a State which, allegedly or in fact, found itself threatened by war preparations by another State should have immediate recourse to the Security Council rather than to resort to measures of anticipatory self-defence.

38. Other problems which were considered as coming within the purview of the Committee included the elimination of poverty, ignorance and injustice, and the establishment of a more equitable economic order, arms control and disarmament, arms production and trade and the obstacles standing in the way of the exercise of the legitimate right of peoples to self-determination.

39. While some delegations held that such a broad concept of the Committee's role was not without interest, others were of the view that attempts to be all-embracing should be avoided and that limits should be set to the Committee's task so that it could accomplish its mission effectively.

2. Observations concerning the Soviet draft

40. Many delegations paid tribute to the Soviet initiative embodied in a draft treaty on the non-use of force (A/AC.193/L.3) stressing its timeliness and considering it as a sound basis for future deliberations of the Committee. The Soviet draft, some delegations pointed out, emphasized practical means of ensuring general and complete respect for the principle of non-use of force in international relations. It also developed the provisions of the Charter and changes that had occurred in the world since the elaboration of the Charter.

41. Other delegations, while respecting the motives behind the Soviet proposal, cast doubt upon the appropriateness of the initiative stressing what they termed as inadequacies and omissions of the draft, particularly if it was compared with either the Declaration on Friendly Relations and Co-operation among States or the Final Act of the Helsinki Conference. Some delegations declined to comment on the details of the draft either because they objected fundamentally to the approach or because they considered it premature. Others referred back to their comments earlier made in the General Assembly.

42. Regarding specific provisions of the Soviet draft treaty, it was pointed out that its title should reflect the concept of refraining from the threat of force because both the use and the threat of force were linked to the problem of peace. The title should therefore read: "Draft World Treaty on the non-use of force or the threat of force in International Relations".

43. It was stressed that the preamble of the draft stated that the High Contracting Parties were "inspired by the desire to make renunciation of the use or threat of force in international relations involving all types of weapons a law of international life", thus highlighting the main purpose of the draft treaty, namely, to ensure more effective observance of the obligations entered into under the Charter.

44. The suggestion was made to compress the first three preambular paragraphs into a single paragraph and shorten the next four preambular paragraphs so that they would refer basically only to the most important agreements or resolutions, such as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the Definition of Aggression and the Final Act of the Conference on Security and Co-operation in Europe.

45. It was also pointed out that the appeal for general and complete disarmament contained in article IV of the draft should actually form part of the preamble so as to highlight the desire of the Contracting Parties to abandon the arms race and increasingly to resort to the peaceful solution of international disputes.

46. With reference to article I of the Soviet draft treaty, it was pointed out that the High Contracting Parties should "strictly abide" by their undertaking not to use force or the threat of force under Article 2, paragraph 4, of the Charter. That key obligation was further developed in relation to the objective political and military realities of the present-day world, and the draft treaty was concerned above all with the renunciation by States of the most dangerous form of the unlawful use of force, namely, the use of armed forces involving any type of weapons, including nuclear or other types of weapons of mass destruction. Thus, the draft treaty was in no way a mere confirmation of the existing obligations of States under the Charter but envisaged that the Parties would take

on additional obligations, which, however, would not replace or alter the basic obligation under the Charter to refrain from the threat or use of force in the settlement of disputes. It was stressed that the provisions of article I, paragraph 1, second part, of the draft treaty were of the utmost importance. Since contemporary international law prohibited the use of force in inter-State relations, it was obvious that the use of all types of armed force and weapons, and particularly nuclear and other types of weapons of mass destruction, was covered by that prohibition, it was pointed out. The prohibition of the use of all types of weapons was the first and essential step towards the absolute prohibition of the use of particular types of weapons and towards the solution of the problems of disarmament and the limitation of the arms race. The foregoing was also logically linked with the "effective measures for lessening military confrontation and for disarmament" called for in article IV. This approach to the problem had won broad recognition and was confirmed, for example, in article 3 (b) of the 1974 Definition of Aggression (General Assembly resolution 3314 (XXIX), which had been adopted on the basis of consensus, in General Assembly resolution 1653 (XVI), on the Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons, and in General Assembly resolution 2936 (XXVII). The Declaration contained in the Final Document of the Tenth Special Session of the General Assembly resolution (S-10/2) singled out measures designed to prevent the outbreak of nuclear war and to lessen the danger of the threat or use of nuclear weapons to ensure the survival of mankind and to eliminate the danger of war. It was proposed that those solemn declarations of the General Assembly should be given the force of treaty norms so that a real step could be made towards preventing nuclear war and ensuring the true security of mankind. That step was essential in view of the rapid development of science and technology which made possible the creation and improvement of nuclear weapons, the most devastating of all weapons.

47. Some delegations formulated objections to the wording and substance of article I. Thus it was stated that article I seemed to refer to certain prior undertakings rather than to any new undertakings. It would be more logical to replace the words "shall strictly abide by their undertaking" in the first line by the words "shall undertake". Furthermore, it should be made clear in the second part of that sentence whether the words "their international relations" referred to relations between the High Contracting Parties themselves or their relations with other States.

48. It was observed that the specific mention in article I of the draft of certain types of weapons could weaken the all-inclusive nature of the prohibition contained in Article 2, paragraph 4, of the Charter. The suggestion was also made that a fourth paragraph should be added to article I to state that violations of obligations assumed under the treaty would entail enforcement measures provided for in Chapter VII of the Charter.

49. It was also stated that article I of the draft treaty contained a restrictive definition of the use of force, which meant that it totally ignored the disguised forms of the use of force, such as subversion, the use of mercenaries, techniques for destabilizing foreign Governments and economic pressure. Since such forms were by far the most frequent in international relations, ignoring them in such a treaty would be tantamount to sanctioning them. Therefore, article I could be strengthened by the inclusion of the prohibitions set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in relation to the use of force to violate the boundaries of another

State, forcible action which deprived peoples of their right to self-determination and freedom and independence, the organization of irregular forces, including mercenaries, for incursion into the territory of another State, the organization of acts of civil strife or terrorist acts in another State, and military occupation of the territory of another State.

50. Also in connexion with article I it was stated that no mention was made therein of the instances in which the Charter made provision for the use of force. In particular, the view was held that article I did not state clearly that the exercise of the right of self-defence, which was perfectly legal under Article 51 of the Charter of the United Nations, did not constitute a case of illicit recourse to force. However, the view was also expressed that article I in no way affected the inalienable right of States to resort to individual or collective self-defence, as set forth in Article 51 of the Charter. Although article III of the draft treaty made no direct reference to the right of self-defence, it unequivocally reaffirmed the possibility of legal resort to force in all cases provided for in the Charter. Furthermore, the reference in article III to treaties and agreements already concluded by States strengthened the right set forth in Article 51 of the Charter, which could be achieved in practice in the form of concluding bilateral and regional agreements for mutual assistance. Therefore, it was stressed, article I, paragraph 3, of the draft treaty retained for States parties the right to use force in cases not prohibited by the Charter. This without prejudice to the possibility of a more specific reflection in the draft of the principle of self-defence in strict accordance with the Charter, namely, as a response to armed attack and excluding all kinds of preventive armed actions.

51. Finally it was also stated that although the most effective way to put a stop to the threat or use of force was to achieve the elimination of Member States' armed forces, it was not appropriate to devote a special article of the draft treaty to that question since matters relating to disarmament had been entrusted to specific United Nations bodies.

52. Article II of the draft treaty, it was stressed, linked the problem of the non-use of force with the principle of the peaceful settlement of disputes in formulations corresponding to Article 2, paragraph 3, and Article 33 of the Charter, and article II, paragraph 3, of the draft treaty introduced provisions which developed those formulations. The treaty, it was pointed out, reaffirmed the principles, embodied in Article 33 of the Charter, of the freedom to choose peaceful means and at the same time referred to settlement procedures adopted by States either in respect of a specific dispute or under individual agreements.

53. On the other hand, some delegations expressed reservations regarding article II of the Soviet draft. Thus, for instance, the view was held that the listing of peaceful means for the settlement of disputes in article II of the draft was incomplete in that it did not include all those listed in Article 33 of the United Nations Charter. The draft concentrated almost exclusively on the problem of the non-use of force, omitting many concepts that were clearly set forth in the Charter. In this connexion, the question was asked whether, rather than repeating the wording of the Charter, it might not be preferable to establish new international norms governing the obligations of States with regard to international disputes. If all that was done was to reaffirm the system established by Articles 33 to 38 of the Charter, it was maintained, a unique opportunity would be missed to make a positive contribution to the codification and progressive development of international law. In particular, the view was held that, in

addition to the peaceful means of settling disputes referred to in article II of the draft treaty, mention should be made of such other procedures as investigation and recourse to regional organizations or agreements.

54. With reference to article III of the Soviet draft treaty, the view was expressed that the principle of the legitimate use of force had also been recognized in many treaties and conventions, particularly multilateral and bilateral mutual defence agreements. Therefore article III of the Soviet draft was indispensable. The principle of "pacta sunt servanda" constituted the backbone of international law and was much more important than the principle of the non-use of force.

55. On the other hand, the text of draft article III gave rise to objections on the part of several delegations. It was characterized as obscure and vague raising doubts as to the real significance of the reservation concerning treaties and agreements concluded earlier and as to whether the domestic procedure of States could set limits on the application of the principle of the non-use of force. In this connexion, it was pointed out that language such as that in article III of the draft, relating to treaties concluded by States, could hardly fail, at the present time, to raise concern about doctrines of limited sovereignty; it was to be hoped that a reference to treaties between members was not an attempt to use treaties obtained by the crudest forms of duress to enhance those tarnished doctrines. When one saw provisions such as those contained in article III of the draft, one could not but recognize the dangers involved in departing from the language of the Charter.

56. In this respect, it was further maintained, the text of article III of the draft might lead to unacceptable results by enabling States not to be bound absolutely by the principle of the non-use of force since no distinction was made as to the nature of earlier treaties and agreements concluded by States. That particular aspect of the draft needed to be ameliorated through careful and precise drafting in conformity with the language of the Charter.

57. Also in this connexion, it was stressed that, in view of the abuse of past treaty provisions purporting to confer the right of one State to intervene by force against another, article III should be qualified by reference to Article 103 of the Charter and to the relevant provisions of the 1969 Vienna Convention on the Law of Treaties regarding treaties imposed by the use of force and those containing provisions in violation of peremptory norms of international law.

58. Finally, the view was held that article III should make reference to the concepts of self-defence and recourse to force as authorized by the United Nations under Article 51 of the Charter. It was, however, stressed that the draft in no way infringed on the right of States to individual or collective self-defence envisaged in Article 51 of the Charter; under article III in particular, it retained the right of each State to repel aggression and eliminate its consequences.

59. Article IV, it was stated, denoted a special characteristic of the Soviet draft, namely, the inclusion of additional means of ensuring the fulfilment of the key obligation of the non-use of force. In this connexion, it was further maintained, the conclusion of the treaty as the most important means of strengthening the effectiveness of the obligation not to use force not only did not exclude but actually presupposed an improvement in the machinery for ensuring that obligation. That was why, it was stated, the draft treaty linked the

question of the non-use of force with measures for lessening military confrontation and for disarmament.

60. With reference to article V of the Soviet draft the view was expressed that its vague wording, together with that of article III, seemed to indicate that the domestic procedure of States could set limits on the application of the principle of the non-use of force. It was also stated, however, that article V made an important contribution to ensuring the non-use of force in inter-State relations; under it, States could incorporate in their Constitutions special sections in which they would proclaim their adherence to the principle of the non-use of force in international relations, reflect their intention to seek general and complete disarmament and avert aggressive wars, and reaffirm the principle of the peaceful coexistence of States with different social systems. Such measures would undoubtedly give additional weight to efforts at the international level for the further strengthening of détente.

61. Some delegations indicated certain elements to be incorporated into the Soviet draft without referring them to specific provisions thereof. Thus, it was pointed out that the draft treaty was based essentially on only two principles: non-use of force in international relations and peaceful settlement of disputes. This constituted an incomplete analysis of all the causes of the continuance of the use of force. The draft treaty did not mention certain principles that were closely linked with the principle of non-use of force such as the duty of States not to intervene in matters within the domestic jurisdiction of any other State, in accordance with the Charter, the principle of equal rights, self-determination of peoples; and the principle that States should fulfil in good faith the obligations assumed by them in accordance with the Charter. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States stipulated that the five points stressed by the non-aligned countries were interrelated; they could not be applied or interpreted separately. The draft treaty should therefore be based on those five points which were as follows: the notion of force and the use of force should be defined adequately so as to cover, in addition to military force, subversion and economic coercion; the treaty must be accompanied by positive commitments with regard to disarmament, particularly nuclear disarmament; the treaty must explicitly reaffirm the legitimacy of the struggle of peoples against colonialism, imperialism, racism and expansionism; the treaty must include provisions for its implementation; it must have the support of the permanent members of the Security Council, which were also nuclear Powers.

62. Furthermore, the draft did not contain details on the notion of a "threat" to use force, although the purpose of the draft and the mandate of the Special Committee were to concretize the provisions of Article 2, paragraph 4, of the Charter, where the questions of the threat of force and the use of force were inseparably linked. Moreover, the treaty should indicate the various manifestations of the use in international relations of not only military force but also physical force in general, as well as psychological, economic and other types of pressure.

63. It was also pointed out that the document eventually produced by the Committee should contain provisions on procedural mechanisms designed to secure the maximum adherence of States in their international conduct to the principle of the non-use of force since, on that point, the draft simply repeated in a general form the provisions of the Charter.

64. Furthermore, the view was held that the draft should mention the exceptions

to the general prohibition of the use of force, taking as a basis Chapters VII, VII and XVIII, and Articles 53 and 107 of the Charter. In this respect, the exception regarding enforcement action taken by the Security Council should be highlighted in the draft so that its provisions would not be interpreted as affecting the powers of the Security Council under the Charter. Moreover, not only should there be a reference to the obligation not to assist or encourage any State to use force in violation of the provisions of the treaty but reference should also be made to Article 2, paragraph 5, of the Charter, under which States were obliged to assist the United Nations in any action taken in accordance with the Charter and to refrain from assisting any State against which the United Nations was taking preventive or enforcement action. As the draft treaty made no provision for machinery for enforcing the obligations imposed on contracting parties by the treaty, a reference to the Charter system of collective security and enforcement machinery appeared to be essential. In order to make clear the relationship of the draft treaty to the Charter, it was stressed, the draft should stipulate that, in the event of a conflict between obligations arising from international agreements and the obligations of Member States under the Charter, the latter should prevail.

65. In addition, the need was stressed for the inclusion of a provision stating that nothing in the treaty could prejudice the right of peoples subject to colonial and racist régimes and foreign occupation to use all the means at their disposal to exercise their inherent right to self-determination and independence and to liberate occupied territories, thus upholding the rights of countries and peoples which were the victims of aggression and foreign occupation as a result of the use of force and reaffirming the principle of non-acquisition of territory by force and of the non-recognition of faits accomplis brought about in violation of the principle of the prohibition of the use of force.

66. Finally, it was also suggested that the draft treaty should contain a provision in the lines of the one appearing in resolution 2625 (XXV) to the effect of stating the duty for every State to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of said acts, when those acts involved a threat or use of force. That requirement deserved attention, it was stated, because terrorism was a form of struggle being employed on several continents. The draft treaty should also include a provision recalling the duty of States to refrain in their international relations from military, political, economic or any form of coercion aimed against the political independence or territorial integrity of any State. There were industrialized countries and great military Powers that could cause at least as much harm by means of political, ideological, economic and other types of pressure as by means of military coercion, it was stressed.

C. Promotion of the peaceful settlement of disputes

1. General views

67. A number of representatives were of the opinion that the Special Committee's tasks could be best fulfilled by enhancing the effectiveness of the principle of the peaceful settlement of disputes. The development of recourse to peaceful settlement of disputes, it was said in this connexion, was a legal means of enhancing the effectiveness of the principle of the non-use of force. Reference

was made to Article 2 of the Charter, which, it was noted, dealt with the principle of the peaceful settlement of disputes before that of non-use of force. There was an obvious logic in that presentation, it was stressed, since the first principle was a prerequisite for the second. It was observed that the most logical approach would be to concentrate on finding alternatives to the use of force, i.e., to concentrate on the positive injunction to settle international disputes by peaceful means. If the ability of the United Nations to promote the peaceful settlement of disputes could be strengthened, that would help to enhance international security and to reduce the number of occasions on which States resorted to the use of force. It was further noted that the various eruptions of violence that had taken place since 1945 had not been due to any lack of clarity as to the nature or scope of the prohibition of the use of force. For the most part, violence had erupted because a dispute had been left to fester for so long that it finally could not be contained. In other cases, small States might have believed that their existence was threatened and might have lacked sufficient faith in the collective security system in general and the Security Council in particular to stake their existence on them, with the result that they had responded to intolerable threats of the use of force by pre-emptive strikes. It was not necessary to justify any such actions as legal in order to recognize that the pressures on States in such circumstances might become irresistible. Since it was likely that there would always be disputes, survival depended on how disputes were handled. Ways must be found to encourage States to honour their obligations under Article 2, paragraph 3, of the Charter to settle disputes peacefully.

68. The Special Committee, it was stressed, should bear in mind that it was not enough to outlaw war in order to prevent it or to try to avert it by the guarantee of collective intervention or the threat of vigorous sanctions. Experience had shown that pressures were ineffective against certain great Powers. If the evil of war was to be uprooted, appropriate procedures would have to be found for the peaceful settlement of disputes which gave rise to it. That was why there was a need, first and foremost, to overhaul the existing machinery and to put the judicial and political means for the peaceful settlement of disputes into general use. It was also said that any pledge to refrain from the use of force would have only limited effect unless it was universally recognized and accompanied by a commitment to settle disputes by peaceful means alone. The use of force, it was added, was often seen as the only means of achieving justified and internationally recognized objectives, especially in regions where national self-determination had still not been achieved. The United Nations must therefore be vigilant and take positive steps to create conditions whereby peaceful means of settling disputes might supersede the resort to force.

69. In order to counter the dangers inherent in the situation created by the continued arms race, it was also stressed, a credible alternative must be offered to the solution of problems by force. That need was recognized in the Charter, which raised States' commitment to the peaceful settlement of disputes to the rank of a basic principle. Yet, neither that commitment nor its procedural elements as stipulated in Chapter VI of the Charter had yet been fully implemented. The obligation of States to settle international disputes by peaceful means was the logical corollary of the prohibition of the use of force. Well-functioning mechanisms and institutions for the peaceful settlement of disputes were certain to create confidence and to facilitate the observance of the principle of the renunciation of force.

70. Objection, however, was made to the idea that improving the machinery for the peaceful settlement of disputes would ensure the fulfilment of the obligation not to use force. The conclusion of a treaty on the non-use of force, it was said, was the most important means of strengthening the effectiveness of the obligation not to use force. Such a treaty would not only exclude but actually presuppose an improvement in the machinery for ensuring that obligation. That was why the draft treaty proposed by the Union of Soviet Socialist Republics, it was added, linked the question of the non-use of force with the question of peaceful settlement of disputes. The two questions constituted two sides of the same coin, and must not be set off one against the other: if international law prohibited the use of force, there remained only one course to take, that of the peaceful settlement of disputes; and, conversely, the existence of an international undertaking concerning the peaceful settlement of disputes automatically signified the illegality of the use of force for settling disputes. Thus, the problem of the peaceful settlement of disputes should be solved in the context of a treaty on the non-use of force. It would be an unforgivable error to replace the treaty on the non-use of force by some other legal instruments on the peaceful settlement of disputes.

2. Specific suggestions

71. A number of representatives pointed out that the Special Committee should formulate specific measures for strengthening the machinery for the peaceful settlement of disputes provided for by the Charter. There was much, it was said in this connexion, that could and must be done in the field of peaceful settlement of disputes. Paragraph 3 of Article 2 of the Charter was far more in need of study than paragraph 4, and ways and means of facilitating its operation must be considered. The international community must be prepared to urge peaceful settlement of disputes and, conversely, to bring the pressure of political opprobrium to bear on States that refused to settle disputes. If disputes were not settled expeditiously by negotiation, the community must press the parties to seek third-party settlement. When States sought third-party settlement they should be praised. When States that had had recourse to third-party settlement honoured the results of that settlement, they should be praised. But if those which submitted matters to third-party settlement and abided by the results were to be praised, commenting adversely on those which did not do so should also be considered. It was necessary to seek both negative and positive reinforcement of the implementation of the obligation to settle disputes by peaceful means. The Special Committee, it was also said, should strive to revitalize Chapter VI of the Charter to make it a workable and effective tool. It would do well to draw, inter alia, on the work of the forthcoming meeting of participants in the Conference on Security and Co-operation in Europe, to be held in Montreux, which, it was said, would examine and elaborate a generally acceptable method for the peaceful settlement of disputes in order to complement the existing methods.

72. A reference was made to the suggestion that a treaty should be concluded containing provisions to ensure implementation of Chapter VI of the Charter and enforcement of the Security Council decisions under Article 37. It was also suggested that, if the Special Committee were to confine itself to the drafting of a General Assembly resolution or declaration that would not create new legal commitments, it might be possible to rely on a simple reaffirmation of existing Charter provisions without necessarily elaborating further on those provisions. However, it was added, if the Committee decided to draft an international treaty

giving rise to legally binding commitments, the establishment of an efficient system to guarantee respect for such commitments was essential, and that could be achieved only through the full development of the concept of the peaceful settlement of disputes.

73. It was further suggested that the Special Committee should consider the causes for the relative disregard on the part of States for existing methods of settling disputes, taking into account two factors: firstly, the sovereign equality of States was a fundamental principle of the United Nations; methods of settling disputes should therefore not be imposed on States. Secondly, certain types of settlements of disputes were difficult to accept in cases where it was a question of a conflict of interests and not simply a legal conflict; in a world that was undergoing constant change owing to its dual East-West and North-South division, solution of this type of conflict by means of pre-established general mechanisms seemed difficult. An analysis of the causes of the reluctance of States to make use of existing methods of settling disputes, it was said, should give rise not to proposals for the creation of new machinery, since all possible procedures seemed to have been imagined already, but rather to efforts to encourage better utilization of existing machinery.

74. With regard to specific methods for the peaceful settlement of disputes, the view was expressed that, without disregarding any of the means provided for by Article 33 of the Charter, the Special Committee would do well if, setting aside ideological positions and the temptation to transfer into the field of international relations mechanisms that were valid at the domestic level, it were to emphasize those methods of peaceful settlement of disputes that were the most likely to inspire the confidence of States. Of course, it was also noted, much could be done to enhance the effectiveness of the means listed in Article 33 of the Charter, and in particular it might be possible to establish a system of impartial fact-finding procedures that would help parties to a dispute to settle their differences through negotiations; such conciliation procedures might require recourse to international bodies capable of ensuring the maximum degree of independence and impartiality. Perhaps Member States, it was suggested, could usefully agree to encourage the Secretary-General to make the fullest use of his fact-finding, reporting and other Charter powers. Perhaps all Members could recognize that the unanimity principle in the Security Council related to recommendations but that no chain of events should ever bar the Council from ascertaining the facts by whatever means it deemed appropriate. It was stated that a suggestion had been made that a commission of the General Assembly should be established to fulfil the functions of mediation, good offices and conciliation. The suggestion was further made to strengthen the consultative and judicial functions of the International Court of Justice. In this connexion, it was said that, since many States in the world were perhaps not yet ready to have vital matters decided by an international court, it was necessary to provide for judicial settlement in as many multilateral and bilateral treaties as possible, and the Committee should consider a general recommendation to that end. In those cases where provision for judicial settlement was not possible, provision should at least be made for arbitration. Learning to settle the less critical issues by third-party methods would build confidence in the system and serve as a basis for eventual routine settlement of all difficult problems by adjudication.

75. The view was expressed that, while not disregarding the role of the Assembly and the Secretary-General, the best means of settling political conflicts was that constituted by the powers of the Security Council pursuant to Articles 34

to 38 of the Charter. It was also considered useful to explore ways and means of routinely involving the Security Council in sensitive situations that did not seem to be approaching a solution. Perhaps Members should all take their community responsibilities more to heart and be willing to bring potentially dangerous situations to the Council even if the parties themselves did not do so. In Articles 35 and 99 respectively, it was added, the Charter clearly gave all Members and the Secretary-General the right to bring matters to the attention of the Council.

D. Strengthening the collective security system provided by the United Nations Charter

76. Several delegations pointed out that, in dealing with such an important issue as the non-use of force on a global basis, the concept of security, both collective and regional, should not be neglected, given the very special geo-strategic features of the modern world. To continue to ignore the existence of Chapter VII or shy away from invoking it, it was stressed, was an open invitation to aggressors to persist in the use of force and was certainly no encouragement to attempt to settle disputes peacefully. Furthermore, it was stated, while the veto was often cited as the cause of failure to apply that machinery, there were in fact many situations in which the veto could not be blamed and where unanimously adopted Security Council resolutions would if applied through enforcement action, solve the problem. What was lacking in those cases, it was further maintained, was the political will to apply existing machinery.

77. A treaty on the non-use of force, it was stated, in addition to being a conscious reaffirmation of the prohibition of the use of force, could provide for effective action to ensure the implementation of Security Council resolutions. The question had been raised as to how the Security Council could properly adjudicate cases of aggression where aggression had not been defined in the Charter. The world community did, however, have a definition of aggression, which was to be found in General Assembly resolution 3314 (XXIX). The Security Council could adopt the required measures in cases of aggression, but, again, it was imperative that its resolutions should be implemented. It was encouraging to note that in recent years that imperative had been clearly reflected in the introduction to the report of the Secretary-General on the work of the Organization. Another encouraging development was the study on the relationship between disarmament and development undertaken pursuant to General Assembly resolution 32/88, it was stressed.

78. It was further observed that statements made by several representatives in the Special Committee suggested that the Eastern European States, the non-aligned States and the Western European and other States acknowledged that the provisions of Article 2, paragraphs 3, 4 and 5, of the Charter had not always been adequately respected and that they recognized the need for greater effectiveness of Security Council resolutions, for enforcement action to deter aggression and for enforcement of the prohibition of the use of the force, rather than a mere reaffirmation of that prohibition. A treaty on the non-use of force should make specific provision for the more effective enforcement of the prohibition. A fourth paragraph should be added to article I of the Soviet draft to state that violations of obligations assumed under the Treaty would entail enforcement measures provided for in Chapter VII of the Charter.

79. Regarding the problem of enhancing the collective security system and in particular the enforcement machinery provided by the Charter, the view was also held that the Soviet draft treaty went a step further than Chapter VII of the Charter by incorporating in article IV the undertaking of States parties to make all possible efforts to implement effective measures for lessening military confrontation and for disarmament; and by incorporating in article II their undertaking to settle disputes by peaceful means. Article V, too, made an important contribution to ensuring the non-use of force in inter-State relations; under it, States could incorporate in their Constitutions special sections in which they should consider the question of what measures must be taken in accordance with their respective constitutional procedures, for ensuring the fullest compliance with their obligations under the treaty. Thus, it was stated, the draft treaty provided for a sound system of measures and guarantees based on the Charter for ensuring fulfilment of the key undertaking of States to refrain from the use or threat of force in international relations. However, the draft treaty should not and could not replace the machinery provided for in the Charter for strengthening international peace and averting armed conflicts.

80. Some delegations pointed out the link between the enhancing of the principle of the non-use of force and the strengthening of the United Nations peace-keeping possibilities. In this connexion, it was pointed out that issues related to the principle on the non-use of force had been examined recently by the United Nations in a number of contexts, a recent instance of which was the discussion by the Special Committee on Peace-keeping Operations of the effectiveness of United Nations peace-keeping operations, which was the principal guarantee against recourse to force by individual States. It was further stressed that although the United Nations peace-keeping system had certainly not lived up to the highest hopes of the founding fathers, it had to be recognized that the Organization had demonstrated very extensive capacities in the area of peace-keeping by interposition. Since 1973 the situation had improved dramatically with regard to interposition operations but if Members were serious about the non-use of force they should support those operations, not merely by accepting their legally binding financial obligations but also by giving those operations all the political and moral co-operation and support possible. Furthermore, it was maintained, Members should seek to build on the United Nations impressive performance in those areas and consider ways and means of strengthening and institutionalizing its capacity to carry out such operations. They should examine such questions as exchanges of information among participants in past operations, training programmes and the earmarking of troops for United Nations service. In that connexion, they would do well to study the experience and record of the Nordic nations in the United Nations peace-keeping and in peace-keeping preparedness.

ANNEX

Draft World Treaty on the Non-Use of Force in International
Relations, submitted by the Union of Soviet Socialist
Republics*

* Previously issued under the symbol A/AC.193/L.3.

World Treaty on the Non-Use of Force in
International Relations

The High Contracting Parties,

Solemnly reaffirming their objective of promoting better relations with each other, ensuring a lasting peace on earth and safeguarding the peoples against any threat to or attempt upon their security,

Seeking to eliminate the danger of the outbreak of new wars and armed conflicts between States,

Proceeding on the basis of their obligations under the Charter of the United Nations to maintain peace and to refrain from the threat or use of force,

Bearing in mind that the definition of aggression formulated and adopted by the United Nations provides new opportunities for the principle of the non-use of force or the threat of force to be consolidated in inter-State relations,

Taking into consideration the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and other resolutions of the United Nations expressing the will of States strictly to abide by the principle of the non-use of force or the threat of force,

Noting with satisfaction that the principle of the non-use of force or the threat of force has been formalized in a series of bilateral and multilateral international instruments, treaties, agreements and declarations,

Recalling in this connexion that the States participating in the Conference on Security and Co-operation in Europe have declared in the Final Act their intention to conduct relations with all States in the spirit of the principles of primary significance set forth therein, among which the principle of the non-use of force or the threat of force holds its rightful place,

Recalling also that the non-aligned States have expressed themselves in their highest forums in favour of strict observance of the principle of the non-use of force or the threat of force in international relations,

Inspired by the desire to make renunciation of the use or threat of force in international relations involving all types of weapons a law of international life

Have agreed as follows:

Article I

1. The High Contracting Parties shall strictly abide by their undertaking not to use in their mutual relations, or in their international relations in

general, force or the threat of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

They shall accordingly refrain from the use of armed forces involving any types of weapons, including nuclear or other types of weapons of mass destruction, on land, on the sea, in the air or in outer space, and shall not threaten such use.

2. They agree not to assist, encourage or induce any States or groups of States to use force or the threat of force in violation of the provisions of this Treaty.

3. No consideration may be adduced to justify resort to the threat or use of force in violation of the obligations assumed under this Treaty.

Article II

The High Contracting Parties reaffirm their undertaking to settle disputes among them by peaceful means in such a manner as not to endanger international peace and security.

For this purpose they shall use, in conformity with the United Nations Charter, such means as negotiation, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice, including any settlement procedure agreed to by them.

The High Contracting Parties shall also refrain from any action which may aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult.

Article III

Nothing in this Treaty shall affect the rights and obligations of States under the Charter of the United Nations and treaties and agreements concluded by them earlier.

Article IV

The High Contracting Parties shall make all possible efforts to implement effective measures for lessening military confrontation and for disarmament which would constitute steps towards the achievement of the ultimate goal - general and complete disarmament under strict and effective international control.

Article V

Each High Contracting Party shall consider the question of what measures must be taken, in accordance with its constitutional procedure, for ensuring the fullest compliance with its obligations under this Treaty.

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